IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2919 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAIYED MUZAMMIL SAIYED MEHBOOBHUSEIN

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner No. 1-11

GOVERNMENT PLEADER for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 1,7,16,36-37

MR DHIRENDRA MEHTA for Respondent No. 2-6,8-15,17-35

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 24/11/2004

ORAL JUDGEMENT

1. Even in the third round Mr. Dhirendra K. Mehta for the respondents is absent.

2. The petitioner has challenged the order dated

31st March 2003 passed in Appeal No.TEN/AS/2/94 by the Gujarat Revenue Tribunal, Ahmedabad.

3. The main contention raised by the petitioners is that though they were affected by the impugned order, they were not made party to the proceedings nor they were heard. According to the petitioners the Tribunal ought to have heard the petitioners before passing the impugned order.

4. In para 2.3 of the petition the petitioners have stated as under:

> "The petitioners states that the sale deeds have been executed in favour of the petitioners, two of which are registered sale deeds and consideration has been paid by the present petitioners to the respondent No.36. It has also come on record that the consideration paid by the petitioners to the respondent No.36 has been used for putting up construction on other lands belonging to the Trust. Thus, the permission granted by the respondent no.37 permitting sale of the lands in questions in favor of the petitioners had exhausted itself and it has been fully implemented. Challenge to the said permission was after implementation thereof by the petitioners and the said permission has been set aside after a lapse of almost 7 years from its implementation without hearing the petitioners."

5. No reply has been filed controverting the aforesaid facts. Learned counsel for the respondents is unable to point out anything contrary to the said submissions. From the record it is clear that though the petitioners were affected by the order of the Tribunal, they were not heard before passing the impugned order. Therefore, I am of he view that the impugned order requires to be quashed and set aside on this ground alone.

6. In the result, the petition is partly allowed. The impugned order dated 31st March 2003 passed by the Gujarat Revenue Tribunal is quashed and set aside. The matter is remanded to the Tribunal for fresh decision. The Tribunal shall take a fresh decision after hearing the petitioners and after taking into consideration the averments made by the petitioners, more particularly in para 2.3 of the present petition. Such decision shall be taken without being influenced by the earlier decision of

the Tribunal. Rule is made absolute tot he aforesaid extent with no order as to costs.

7. It is clarified that in view of the fact that the matter is remanded to the Tribunal as the petitioners were not heard, this Court has not gone into the merits of the matter and the present order has been passed only on the ground stated hereinabove.

[K.S. JHAVERI, J.]
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